

## **REGULATORY BASIS AND PRINCIPLES**

1. If we have valid information that there is a water quality impairment at the point of discharge we can not authorize a discharge that contributes to the impairment. This is applicable even if the receiving water is not currently listed on the 303(d) list. [40 CFR 122.44(d)(1)(i)].
2. Listing of a waterbody on the 303(d) list does not automatically mean impairment at the point of discharge. We may use our professional judgement to assess information on impairment at the place and time of discharge.
3. The professional judgement on impairment of the receiving water must take into account the type of pollutant (conservative, non-conservative), the timing of the critical period, the basis of the criteria and the location of the listing.
4. We have authority to require dischargers to do receiving water studies around their point of discharge to determine assimilative capacity. [40 CFR 122.41(h), WAC 173-220-210(1)(c)]
5. If we allow discharges which temporarily contribute to an impairment, the permit must contain final limits to meet the standards, a compliance schedule which includes an engineering report to meet the final limits, and interim limits to assure no increase in loading during the compliance schedule. [40 CFR 122.44(d), 40 CFR 122.47, WAC 173-201A-160(4)]
6. Mitigation and seasonal discharge limits are allowable tools for meeting water quality standards.
7. There is no regulation allowing de minimis loading to an impaired receiving water.
8. The timing of receiving water studies and technology studies may be different for different classes of dischargers.
9. We may have to allow a compliance schedule to exceed 10 years in some limited circumstances.
10. A determination that natural conditions in a receiving water exceeded water quality standards can only be made from: 1) data from the waterbody prior to any human disturbance in the watershed, 2) correlation of the water quality to a similar site in a physically comparable stream in an adjacent undisturbed watershed, or 3) a model of the waterbody and watershed developed as part of a TMDL. [WAC 173-201A-020].
11. Mixing zones (and extended mixing zones) are not applicable when the receiving water is not meeting standards. [WAC 173-201A-100(14)] Using a mixing zone when background exceeds the criteria would require that the discharge concentration be less than the criteria.

12. A new discharge cannot be allowed to an impaired receiving water if it will cause a reduction in water quality or discharge at concentrations above water quality standards (for the pollutant(s) causing the impairment at the time of critical condition. [40 CFR 122.4(i)]
13. The regulation at 40 CFR 122.4 (i) **Prohibitions** addresses 2 types of discharge situations. The first sentence addresses discharge situations for which no TMDL has been completed.

*No permit may be issued to a new source or new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards.*

The rest of the paragraph discusses situations in which a TMDL and WLA's have been completed.

*The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by sections 301(b)(1)(A) and 301(b)(1)(B) of CWA, and for which the State or interstate agency has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that: (1) There are sufficient remaining pollutant load allocations to allow for the discharge; and (2) The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. ...*